UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/027,792	02/07/2008	STEPHEN H. THURLOW	W115 1060.1	5502

92548 7590 06/21/2017

Travelport
Attn: Linda Rutherford
300 Galleria Parkway, NW
Atlanta, GA 30339

EXAMINER
VETTER, DANIEL

ART UNIT	PAPER NUMBER
3628	

MAIL DATE	DELIVERY MODE
06/21/2017	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN H. THURLOW, BRIAN A. PAVELKA, and SUZANNE R. CALLAWAY

Appeal 2016-005945
Application 12/027,792[1]
Technology Center 3600

Before JOHN A. EVANS, LARRY J. HUME, and JAMES W. DEJMEK, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–12, 31, 33–43, and 45. Appellants have canceled claims 13–30, 32, and 44. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

[1] According to Appellants, the real party in interest is Travelport, LP. App. Br. 1.

STATEMENT OF THE CASE[2]

The Invention

Appellants' disclosed and claimed inventions "relate[] generally to verification of prices for travel itineraries and, more particularly, to an automated process for considering and applying variances in the numerous factors that affect ticket pricing and ticket reissues." Spec. ¶ 1.

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on appeal (*emphasis* added to contested limitations):

> 1. A method for a fare verification system to perform air fare verification and auditing for a travel itinerary associated with a ticketing transaction that was conducted, at least in part, with a computer reservation system, comprising the steps of:
>
> receiving at the fare verification system a request via a communications network *to verify that the air fare for the travel itinerary has been priced correctly by an agent*;
>
> determining, using a computer processor of the fare verification system, if the air fare for the travel itinerary is in a fares database;
>
> validating a plurality of rules and restrictions that is applicable to the air fare;
>
> determining, using the computer processor, if the air fare passes each of the plurality of rules and restrictions and *verifying the air fare has been priced correctly by the agent* if each of the plurality of rules and restrictions is satisfied;

---

[2] Our decision relies upon Appellants' Appeal Brief ("App. Br.," filed Nov. 13, 2015); Reply Brief ("Reply Br.," filed May 20, 2016); Examiner's Answer ("Ans.," mailed Mar. 21, 2016); Final Office Action ("Final Act.," mailed Mar. 18, 2015); and the original Specification ("Spec.," filed Feb. 7, 2008).

determining, using the computer processor, a failure reason associated with the air fare, if the air fare does not satisfy each of the plurality of rules and restrictions;

providing a verification response for the air fare verification request via the communications network, *wherein the verification response provides a notification to a requestor of any pricing error made by the agent during the ticketing transaction*; and

automatically providing an audit report following completion of the ticketing transaction via the communications network for each ticket having a pricing error that is based on the plurality of rules and restrictions, the audit report including an indication of any pricing error made by the agent and a discrepancy amount.

Prior Art

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

Rabideau et al. ("Rabideau")	US 2002/0010664 A1	Jan. 24, 2002
Bolduc et al. ("Bolduc")	US 2006/0026014 A1	Feb. 2, 2006
Baggett et al. ("Baggett")	US 2006/0053052 A1	Mar. 9, 2006
Phillips	US 2007/0061174 A1	Mar. 15, 2007
Williamson et al. ("Williamson")	US 2008/0010101 A1	Jan. 10, 2008
Wofford et al. ("Wofford")	US 2008/0319808 A1	Dec. 25, 2008

Rejections on Appeal

R1. Claims 1–12, 31, 33–43, and 45 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 3; Ans. 2.

R2. Claims 1–6, 10–12, 33–35, 38, 39, 42, 43, and 45 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over the combination of Williamson, Phillips, and Rabideau. Final Act. 4; Ans. 2.

R3. Claims 7 and 31 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Williamson, Phillips, Rabideau, and Bolduc. Final Act. 7; Ans. 2.

R4. Claim 8 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Williamson, Phillips, Rabideau, Bolduc, and Baggett. Final Act. 8; Ans. 2.

R5. Claim 9 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Williamson, Phillips, Rabideau, and Baggett. *Id.*

R6. Claims 36 and 37 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Williamson, Phillips, Rabideau, Bolduc, and Baggett. Final Act. 9; Ans. 2.

R7. Claims 40 and 41 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Williamson, Phillips, Rabideau, and Wofford. Final Act. 9; Ans. 3.

CLAIM GROUPING

Based on Appellants' arguments (App. Br. 3–5), we decide the appeal of non-statutory subject matter Rejection R1 of claims 1–12, 31, 33–43, and 45 on the basis of representative claim 1. Based upon Appellants'

further arguments (App. Br. 6–10), we decide the appeal of obviousness Rejection R2 of claims 1–6, 10–12, 33–35, 38, 39, 42, 43, and 45 on the basis of representative claim 1.

Remaining claims 7–9, 31, 36, 37, 40, and 41 in Rejections R3 through R7, not argued separately or substantively, stand or fall with the respective independent claim from which they depend.[3]

ISSUES AND ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. We do not consider arguments that Appellants could have made but chose not to make in the Briefs, and we deem any such arguments waived. 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellants' arguments with respect to claims 1–12, 31, 33–43, and 45, and we incorporate herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons and rebuttals set forth in the Examiner's Answer in response to Appellants' arguments. We incorporate such findings, reasons, and rebuttals herein by reference unless otherwise noted. However, we highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

---

[3] "Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

1. § 101 Rejection R1 of Claims 1–12, 31, 33–43, and 45

Issue 1

Appellants argue (App. Br. 3–5; Reply Br. 1–2) the Examiner's rejection of claim 1 under 35 U.S.C. § 101 as being directed to non-statutory subject matter is in error. These contentions present us with the following issue:

Did the Examiner err in finding the claims as a whole, as represented by claim 1, do not amount to significantly more than an abstract idea and therefore are directed to non-statutory subject matter?

Analysis

Appellants contend:

> [The] Examiner has failed to establish a *prima facie* case, as part of Step 2A [of the *Alice*[4] analysis], firstly because Examiner has missated and thus misapplied applicable law in his evaluation of the claims. In the March 18, 2015 Final Office Action ("Final OA"), Examiner states that "there is not a distinction" between whether a claimed invention involves an abstract idea as opposed to whether the claimed invention is directed towards making a claim over the abstract idea. Final OA at 2. This is not the law. Per the *Interim Eligibility Guidance*, "[a]n invention is not rendered ineligible for patent simply because it involves an abstract concept." *Interim Eligibility Guidance*, Fed. Reg. 74628, 74622 at n. 9. As the USPTO explains, "[c]ourts tread carefully in scrutinizing such claims because at some level all inventions embody, use, reflect, rest upon, or apply a law of nature, natural phenomenon or abstract idea." The key question is whether the claim is directed to or recites the judicial exception in the claim. *Id.* at 74622. *See also* 2013 Interim Guidance of Patent Subject

[4] *See Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014).

> Matter Eligibility Computer Based Training at Slide 11 ("If the invention is merely based on or involves an exception, but the exception is not set forth or described in the claim, the claim is not directed to an exception (Step 2A: NO) and is eligible.")
>
> Here, the claims involve the idea of pricing errors, but the claims are clearly not directed to "tie" up the concept of determining pricing errors. The claims recite multiple limitations, focusing on air fare verification and auditing for a travel itinerary associated with a ticketing transaction that was conducted, at least in part, with a computer reservation system. There is nothing within the claims that would suggest that the whole concept of determining pricing errors is claimed. Consequently, the present claims are at least eligible for the streamlined analysis of Part I.B.3 of the Interim Eligibility Guidance, which provides the analogous example of the robotic arm wherein an abstract concept is involved, but not the subject of the claims.

App. Br. 3–4. Appellants further argue the claims are directed to "significantly more" than the abstract idea because they recite "a particular machine, in this case, a computer reservation system and a fare verification system." App. Br. 5.

We first note Decisions of the Board are based upon relevant case law as set forth by the Federal Circuit and the Supreme Court, and do not rely upon examination guidelines provided by the Office to assist Patent Examiners in determining subject matter eligibility during prosecution of patent applications.[5]

In response to Appellants' contentions "the claims involve the idea of pricing errors, but the claims are clearly not directed to 'tie' up the concept of determining pricing errors," (App. Br. 4), the Examiner finds "the abstract

[5] *Cf.* App. Br. 3–4 (discussing streamlined analysis in Part I.B.3 of USPTO Interim Subject Matter Eligibility Examination Guidelines).

idea of determining pricing errors in air fares is plainly recited in the claim," and "[t]he claims only manipulate abstract data elements and the data processing functionality is directed to the abstract idea itself." Ans. 3.

In response, the Examiner further finds:

> Rather than being a "particular" machine, these [claim] elements are merely general purpose hardware elements containing instructions to implement the abstract idea. The Specification describes the "air fare verification system" as "includ[ing] a data storage device, a processor, and a plurality of components that perform the steps of the method when operated on the processor." ¶ 0009 of the published application. Rather than reciting a particular machine, this is similar to the generic hardware elements in the ineligible claims of *Alice*.

Ans. 4.

Section 101 provides that anyone who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" may obtain a patent. 35 U.S.C. § 101. The Supreme Court has repeatedly emphasized that patent protection should not extend to claims that monopolize "the basic tools of scientific and technological work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). Accordingly, laws of nature, natural phenomena, and abstract ideas are not patent-eligible subject matter. *Alice*, 134 S. Ct. at 2354.

The Supreme Court's two-part *Alice* framework guides us in distinguishing between patent claims that impermissibly claim the "building blocks of human ingenuity" and those that "integrate the building blocks into something more." *Id.* (internal quotations omitted). First, we "determine

whether the claims at issue are directed to a patent-ineligible concept." *Id.* at 2355. If so, we "examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Id.* at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). While the two steps[6] of the *Alice* framework are related, the "Supreme Court's formulation makes clear that the first-stage filter is a meaningful one, sometimes ending the § 101 inquiry." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). We note the Supreme Court "has not established a definitive rule to determine what constitutes an 'abstract idea'" for the purposes of step one. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct at 2357).

However, our reviewing court has held claims ineligible as directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Alice*, 134 S. Ct. at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.").

---

[6] Applying this two-step process to claims challenged under the abstract idea exception, the courts typically refer to step one as the "abstract idea" step and step two as the "inventive concept" step. *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Turning to the claimed invention, claim 1 recites a "method for a fare verification system to perform air fare verification and auditing for a travel itinerary associated with a ticketing transaction that was conducted, at least in part, with a computer reservation system." Claim 1 (preamble). The claim limitations also require the steps of verifying that the air fare for a travel itinerary has been correctly priced by an agent, and providing a notification of any incorrect fare pricing.

Appellants allege:

> Here, the claims involve the idea of pricing errors, but the claims are clearly not directed to "tie" up the concept of determining pricing errors. The claims recite multiple limitations, focusing on air fare verification and auditing for a travel itinerary associated with a ticketing transaction that was conducted, at least in part, with a computer reservation system. There is nothing within the claims that would suggest that the whole concept of determining pricing errors is claimed. Consequently, the present claims are at least eligible for the streamlined analysis of Part I.B.3 of the Interim Eligibility Guidance, which provides the analogous example of the robotic arm wherein an abstract concept is involved, but not the subject of the claims.

App. Br. 4.

Under the "abstract idea" step we must evaluate "the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Alice*, 134 S. Ct. at 2354. (citation omitted). If the concept is directed to a patent-ineligible concept, we proceed to the "inventive concept" step. For that step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an 'inventive concept' in the application of the

ineligible subject matter' to which the claim is directed." *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258 (*quoting Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).

Under step one, we agree with the Examiner that the claimed invention is "directed to the abstract idea of determining pricing errors, a fundamental economic practice and method of organizing human activities." Final Act. 3; *see also* Ans. 3. As the Specification itself observes, the invention "relates generally to verification of prices for travel itineraries and, more particularly, to an automated process for considering and applying variances in the numerous factors that affect ticket pricing and ticket reissues." Spec.¶ 1. We find this type of activity, i.e., verifying prices for travel itineraries, while taking into account variances of factors affecting ticket pricing includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out by a human with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*").[7]

Our reviewing court has previously held other patent claims ineligible for reciting similar abstract concepts that merely price a product for sale. For example, in *OIP Technologies*, the Federal Circuit concluded the concept of price optimization after analyzing statistics about customer responses ("offer based pricing") is abstract under step one. *OIP*

[7] Our reviewing court further guides that "a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101." *Cybersource*, 654 F.3d at 1373.

Technologies, Inc. v. Amazon.com, Inc., 788 F.3d 1359 (2015),[8] *see also Versata Dev. Grp. v. SAP Am.*, 793 F.3d 1306, 1333–34 (Fed. Cir. 2015) (price-determination method involving arranging organizational and product group hierarchies). Here, in agreement with the Examiner, we find the claimed validation of correct air fare pricing is similarly abstract.

In applying step two of the *Alice* analysis, our reviewing court guides we must "determine whether the claims do significantly more than simply describe [the] abstract method" and thus, transform the abstract idea into patentable subject matter. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). We look to see whether there are any "additional features" in the claims that constitute an "inventive concept," thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. *Alice*, 134 S. Ct. at 2357. Those "additional features" must be

---

[8] In *OIP*, our reviewing court held:

> This concept of "offer based pricing" is similar to other "fundamental economic concepts" found to be abstract ideas by the Supreme Court and this court. *See, e.g., Alice*, 134 S.Ct. at 2357 (intermediated settlement); *Bilski v. Kappos*, 561 U.S. 593, 611, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010) (risk hedging); *Ultramercial, Inc. v. Hulu*, LLC, 772 F.3d 709, 715 (Fed. Cir. 2014) (using advertising as an exchange or currency); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (data collection); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1346 (Fed. Cir. 2013) (generating tasks in an insurance organization). And that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (collecting cases); *Accenture*, 728 F.3d at 1345.

OIP Technologies, 788 F.3d at 1362–63.

more than "well-understood, routine, conventional activity." *Mayo*, 556 U.S. at 79.

Evaluating representative claim 1 under step 2 of the *Alice* analysis, we agree with the Examiner that it lacks an "inventive concept" that transforms the abstract idea of determining pricing errors into a patent-eligible application of that abstract idea. Ans. 3–5. We agree with the Examiner because, as in *Alice*, we find the recitation of a computer reservation system and a fare verification system that includes a processor that receives a request and provides notifications via a communications network is simply not enough to transform the patent-ineligible abstract idea here into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2357 ("[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.").

Accordingly, based upon the findings above, on this record, we are not persuaded of error in the Examiner's conclusion that the appealed claims are directed to non-statutory subject matter. Therefore, we sustain the Examiner's non-statutory subject matter rejection of independent claim 1, and grouped claims 2–12, 31, 33–43, and 45 which fall therewith. *See* Claim Grouping, *supra*.

2. § 103 Rejection R2: Claims 1–6, 10–12, 33–35, 38, 39, 42, 43, and 45

Issue 2

Appellants argue (App. Br. 6–10) the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a) as being obvious over the combination of Williamson, Phillips, and Rabideau is in error. These contentions present us with the following issues:

(a) Did the Examiner err in finding the cited prior art combination teaches or suggests "[a] method for a fare verification system to perform air fare verification and auditing for a travel itinerary associated with a ticketing transaction that was conducted, at least in part, with a computer reservation system" that includes, *inter alia*, the limitations of:

> receiving at the fare verification system a request . . . to verify that the air fare for the travel itinerary has been priced correctly by an agent . . . determining, using the computer processor, if the air fare passes each of the plurality of rules and restrictions and verifying the air fare has been priced correctly by the agent . . . [and] providing a verification response . . . [that] provides a notification to a requestor of any pricing error made by the agent during the ticketing transaction,

as recited in claim 1?

(b) Did the Examiner err in combining the cited prior art because Williamson teaches away from the claims and is not a proper prior art reference for obviousness?

(c) Did the Examiner err in combining the cited prior art because Williamson teaches away from the claims such that there is no suggestion or motivation to modify Williamson in view of Phillips and Rabideau?

Analysis

Issue 2(a) – All Limitations are Taught or Suggested

Appellants contend Williamson is concerned with a process for determining pricing associated with new or reissued tickets and, in contrast, "the present claim limitations involve verifying that the air fare, which is associated with a ticketing transaction that was conducted, at least in part, with a computer reservations system, has been priced correctly." App. Br. 7.

Appellants emphasize, Williamson "actually discloses receiving requests for a change to the ticket, not a request for verification, as called for by the claims . . . . The ticket reconstruction logic [of Williamson] does not seek to find pricing errors from tickets already issued." *Id.* Further, Appellants allege "*Williamson* does not teach providing a notification of pricing error that was made during the ticketed transaction, as called for by the claims." App. Br. 8.

The predecessor to our reviewing court has held "one cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references." *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). "The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference . . . . Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art." *Id.* at 425.

The Examiner finds, and we agree, the claims "read on verification of pricing for *any* airline ticket and, as such, read on the verifications in Williamson." Ans. 5 (emphasis added). Contrary to Appellants' argument, we find the claims do not preclude verification of changed tickets, i.e., tickets that have already been issued. Consequently, we find Appellants' "arguments fail from the outset because . . . they are not based on limitations appearing in the claims." *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

Appellants further argue Rabideau does not teach that for which the Examiner offers it, i.e., "that price verification is for a pricing done by an agent and that the pricing error has been made by the agent." App. Br. 9

(citing Final Act. 5). Further in this regard, Appellants argue Rabideau "does not meet the claim limitation that there be indications or notifications of any pricing errors made by the agent because the batch processing [of Rabideau] would, by design, miss errors due to its sampling nature." App. Br. 9.

In response, the Examiner finds:

> The claims do not exclude the possibility of missing errors. Moreover, they merely require providing an audit report for a single ticketing transaction faring verification . . . Rabideau suggests sampling in order to limit large amounts of data processing—a concern that one of ordinary skill would recognize does not apply when only auditing a single ticketing transaction.

Ans. 5. Accordingly, we agree with the Examiner's findings regarding the teachings of the prior art combination, including Rabideau, in teaching or suggestion the contested limitations of claim 1.

Issue 2(b) – Williamson does not Teach Away

Appellants contend "*Williamson* explicitly teaches that 'user 16 or the administrator might instruct the ticket reconstruction logic 52 (FIG. 2) to waive certain conditions or force a manual pricing of one or more candidate solutions that had been eliminated'" (App. Br. 8 (quoting Williamson ¶ 67)), and further allege this type of action is purportedly described by the Specification (¶ 3) as being what Appellants' invention is designed to identify. Appellants allege the "Examiner has not made any reasoned explanation as to why a system that causes pricing errors would be considered by one skilled in the art to render claims that involve finding those errors as obvious, and thus, the Examiner's burden of demonstrating obviousness has not been met." *Id.*

"A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *Ricoh Co., Ltd. v. Quanta Computer, Inc.,* 550 F.3d 1325, 1332 (Fed. Cir. 2008) (citations omitted). A reference does not teach away if it merely expresses a general preference for an alternative invention from amongst options available to the ordinarily skilled artisan, and the reference does not discredit or discourage investigation into the invention claimed. *In re Fulton,* 391 F.3d 1195, 1201 (Fed. Cir. 2004).

The Examiner responds to Appellants' allegations of teaching away by finding Williamson's option to waive conditions or force manual pricing is merely an option, and this extra functionality "does not mean that it fails to teach any of the claim [limitations] or that it teaches away from the invention." Ans. 5. Teaching an alternative or equivalent method does not teach away from the use of a claimed method. *See In re Dunn*, 349 F.2d 433, 438 (CCPA 1965).

Issue 2(c) – The Examiner Provided Proper Motivation to Combine

Appellants contend "Williamson cannot be combined with those systems or modified by any of the ideas expressed by *Phillips* or *Rabideau*, because *Williamson* teaches that agents can modify the fares to suit the travelers' needs, (*Williamson* at ¶ 67), thus creating opportunities for pricing errors." App. Br. 8–9.

Our reviewing courts have held the relevant inquiry is whether the Examiner has set forth "some articulated reasoning with some rational

underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (cited with approval in *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007)).

With respect to the motivation to combine the references in the manner suggested, the Examiner finds:

> It would have been prima facie obvious to one having ordinary skill in the art to incorporate . . . [creating an audit report for errors based on the plurality of rules and restrictions] for the same reason it is useful in Phillips-namely, to quickly catch pricing errors and prevent lost revenue. Moreover, this is merely a combination of old elements in the art of travel planning. In the combination, no element would serve a purpose other than it already did independently, and one skilled in the art would have recognized that the combination could have been implemented through routine engineering producing predictable results.

Ans. 5. The Examiner further finds:

> It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to incorporate the[ ] features [of providing an indication of any pricing error made by the agent and a discrepancy amount] for the same reason they are useful in Rabideau-namely, to assist in reviewing travel document records for accuracy and for collecting balances due from agents. Moreover, this is merely a combination of old elements in the art of travel planning. In the combination, no element would serve a purpose other than it already did independently, and one skilled in the art would have recognized that the combination could have been implemented through routine engineering producing predictable results.

Id.

We find these stated reasons meet the articulated reasoning/rational underpinning requirement of *KSR*. Moreover, Appellants have not

demonstrated that the Examiner's proffered combination of references would have been "uniquely challenging or difficult for one of ordinary skill in the art." *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418). Nor have Appellants provided objective evidence of secondary considerations which our reviewing court guides "operates as a beneficial check on hindsight." *Cheese Sys., Inc. v. Tetra Pak Cheese and Powder Sys.*, 725 F.3d 1341, 1352 (Fed. Cir. 2013).

Accordingly, based upon the findings above, on this record, we are not persuaded of error in the Examiner's reliance on the combined teachings and suggestions of the cited prior art combination to teach or suggest the disputed limitation of claim 1, nor do we find error in the Examiner's resulting legal conclusion of obviousness. Therefore, we sustain the Examiner's obviousness rejection of independent claim 1, and grouped claims 2–6, 10–12, 33–35, 38, 39, 42, 43, and 45 which fall therewith. *See* Claim Grouping, *supra*.

3. Rejections R3–R7 of Claims 7–9, 31, 36, 37, 40, and 41

In view of the lack of any substantive or separate arguments directed to obviousness Rejections R3 through R7 of claims 7–9, 31, 36, 37, 40, and 41 under § 103 (*see* App. Br. 1), we sustain the Examiner's rejection of these claims. Arguments not made are waived.[9]

[9] Appellants merely argue, "[f]or purposes of this Appeal, Appellant[s] will address Examiner's rejections in the context of claim 1 with the intent that all claims are argued as a group." App. Br. 1.

REPLY BRIEF

To the extent Appellants may advance new arguments in the Reply Brief (Reply Br. 1–2) not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner's Answer will not be considered except for good cause (*see* 37 C.F.R. § 41.41(b)(2)), which Appellants have not shown.

CONCLUSIONS

(1) The Examiner did not err with respect to non-statutory subject matter Rejection R1 of claims 1–12, 31, 33–43, and 45 under 35 U.S.C. § 101, and we sustain the rejection.

(2) The Examiner did not err with respect to obviousness Rejections R2 through R7 of claims 1–12, 31, 33–43, and 45 under 35 U.S.C. § 103(a) over the cited prior art combinations of record, and we sustain the rejections.

DECISION

We affirm the Examiner's decision rejecting claims 1–12, 31, 33–43, and 45.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED